

1  
2  
3  
4  
5  
6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 ALAN L. MEADOWS,

10 Plaintiff,

CASE NO. C17-5223-MAT

11 v.

12 NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,

ORDER RE: SOCIAL SECURITY  
DISABILITY APPEAL

13 Defendant.

14 Plaintiff Alan L. Meadows proceeds through counsel in his appeal of a final decision of the  
15 Commissioner of the Social Security Administration (Commissioner). The Commissioner denied  
16 Plaintiff's application for Disability Insurance Benefits (DIB) after a hearing before an  
17 Administrative Law Judge (ALJ). Having considered the ALJ's decision, the administrative  
18 record (AR), and all memoranda of record, this matter is AFFIRMED.

19 **FACTS AND PROCEDURAL HISTORY**

20 Plaintiff was born on XXXX, 1963.<sup>1</sup> He has a high school diploma and two years of college  
21 education, and additional training as a network manager. (AR 296.) He previously worked as a  
22

23 <sup>1</sup> Dates of birth must be redacted to the year. Fed. R. Civ. P. 5.2(a)(2) and LCR 5.2(a)(1).

1 network manager and security guard in the United States Army, a retail salesperson at a sporting  
2 goods store, and a shift supervisor for security with the Department of Defense. (AR 296, 312.)

3 Plaintiff applied for DIB in April 2014, alleging that he was disabled as of August 26, 2013.  
4 (AR 257-60.) That application was denied initially and upon reconsideration and Plaintiff timely  
5 requested a hearing. (AR 179-81, 183-86.)

6 On August 25, 2015, ALJ Michael Gilbert held a hearing, taking testimony from Plaintiff,  
7 Plaintiff's wife, and a vocational expert (VE). (AR 61-135.) On November 21, 2016, the ALJ  
8 issued a decision finding Plaintiff not disabled. (AR 15-54.) Plaintiff timely appealed. The  
9 Appeals Council denied Plaintiff's request for review on February 6, 2017 (AR 1-6), making the  
10 ALJ's decision the final decision of the Commissioner. Plaintiff appealed this final decision of  
11 the Commissioner to this Court.

### 12 **JURISDICTION**

13 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

### 14 **DISCUSSION**

15 The Commissioner follows a five-step sequential evaluation process for determining  
16 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it must  
17 be determined whether the claimant is gainfully employed. The ALJ found Plaintiff had not  
18 engaged in substantial gainful activity since August 26, 2013, the alleged onset date. (AR 17.) At  
19 step two, it must be determined whether a claimant suffers from a severe impairment. The ALJ  
20 found severe Plaintiff's personality disorder not otherwise specified, with anti-social traits; post-  
21 traumatic stress disorder (PTSD); obstructive sleep apnea; asthma; degenerative disc disease;  
22 status-post left foot arthrodesis of the first metatarsophalangeal joint; and obesity. (AR 17-21.)  
23 Step three asks whether a claimant's impairments meet or equal a listed impairment. The ALJ

1 found that Plaintiff's impairments did not meet or equal the criteria of a listed impairment. (AR  
2 21-23.)

3 If a claimant's impairments do not meet or equal a listing, the Commissioner must assess  
4 residual functional capacity (RFC) and determine at step four whether the claimant has  
5 demonstrated an inability to perform past relevant work. The ALJ found Plaintiff capable of  
6 performing light work, with the following additional limitations: he can lift/carry 20 pounds  
7 occasionally and 10 pounds frequently. He can stand/walk for up to six hours in an eight-hour  
8 workday. He cannot climb ladders, ropes, or scaffolds, and can perform all other postural activities  
9 at most frequently. He can tolerate no greater than occasional exposure to extreme cold, extreme  
10 heat, humidity, excess noise (meaning level 4 or greater (with constant exposure to noise up to  
11 level 3)), atmospherics, and workplace hazards. He can perform simple, routine, repetitive tasks  
12 (as defined by a reasoning level no greater than level 2), with no interaction with the public as part  
13 of his job duties. Incidental public contact "as defined by way of example at the hearing" is  
14 permitted. (AR 23.) He can tolerate no greater than occasional interaction with co-workers, with  
15 no "tandem tasks." (*Id.*) With that assessment, the ALJ found Plaintiff unable to perform any past  
16 relevant work. (AR 51-52.)

17 If a claimant demonstrates an inability to perform past relevant work, the burden shifts to  
18 the Commissioner to demonstrate at step five that the claimant retains the capacity to make an  
19 adjustment to work that exists in significant levels in the national economy. With the assistance  
20 of the VE, the ALJ found Plaintiff capable of transitioning to other representative occupations,  
21 including routing clerk, motel/hotel housekeeper, electronics worker, and small products  
22 assembler. (AR 52-54.)

23 This Court's review of the ALJ's decision is limited to whether the decision is in

1 accordance with the law and the findings supported by substantial evidence in the record as a  
2 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means more  
3 than a scintilla, but less than a preponderance; it means such relevant evidence as a reasonable  
4 mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881 F.2d 747, 750  
5 (9th Cir. 1989). If there is more than one rational interpretation, one of which supports the ALJ's  
6 decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.  
7 2002).

8 Plaintiff argues the ALJ erred in (1) discounting his subjective testimony; (2) assessing the  
9 medical evidence; and (3) discounting the statements and testimony of his wife, Kathy Meadows.<sup>2</sup>  
10 Plaintiff argues that this case should be remanded for a finding of disability, or, in the alternative,  
11 further proceedings. The Commissioner argues that the ALJ's decision is supported by substantial  
12 evidence and should be affirmed, and that if it is remanded, it should be remanded for further  
13 proceedings because there is serious doubt as to whether Plaintiff is disabled.

14 Plaintiff's subjective testimony

15 The ALJ discounted Plaintiff's credibility for a number of reasons: (1) Plaintiff's most  
16 recent job as a security guard in Afghanistan ended because the contract expired, not because he  
17 could no longer perform the job; (2) Plaintiff applied for benefits twice before working in  
18 Afghanistan for a year, and reapplied upon his return, and the absence of evidence showing that  
19 his conditions worsened after he returned from Afghanistan suggests that he was not disabled after  
20 Afghanistan just as he was not disabled before Afghanistan; (3) Plaintiff engaged in activities  
21

---

22 <sup>2</sup> Plaintiff also challenges the ALJ's RFC determination and step-five findings, but these arguments  
23 are enveloped by the other assignments of error and need not be addressed separately. *See* Dkt. 11 at 2, 17-18.

1 inconsistent with his alleged limitations; (4) Plaintiff made inconsistent reports regarding his  
2 activities, success with treatment, use of a cane, effects of a 2003 car accident, and alcohol intake;  
3 (5) Plaintiff emphasized his prior traumatic brain injury (TBI) at many mental health appointments,  
4 but this injury is not documented in his military paperwork; and (6) Plaintiff's use of threats  
5 appears to be based on his desire to get his way, rather than uncontrollable psychiatric symptoms.  
6 (AR 25-46.) Plaintiff argues that these reasons are not clear and convincing, as required in the  
7 Ninth Circuit. *Burrell v. Colvin*, 775 F.3d 1133, 1136-37 (9th Cir. 2014). The Court will address  
8 the ALJ's reasons in turn.

9 A. Contract job in Afghanistan & prior applications

10 Plaintiff argues that the ALJ overlooked the fact that he decided not to renew his contract  
11 job because of his impairments. Dkt. 11 at 9-10. This argument misses the ALJ's point, which is  
12 that Plaintiff was able to perform "high technical and highly demanding work" for a year, after he  
13 had claimed to have been disabled and reasserted his disability on the same grounds after returning  
14 from Afghanistan. (AR 25, 42-43.) It is the ability to perform the work that the ALJ finds  
15 inconsistent with an allegation of disability, and this a reasonable interpretation of the evidence.

16 Plaintiff also argues that the ALJ erred in considering his prior applications and evidence  
17 related to that time period, because the adjudicated application asserted an alleged onset date of  
18 August 26, 2013. Dkt. 11 at 10. But the ALJ explained why he looked to the earlier evidence:  
19 because it was relevant to determining whether Plaintiff's condition worsened over the years, as  
20 he alleged. (AR 15.) The earlier evidence may not be probative as to Plaintiff's functioning since  
21 August 2013, as argued by Plaintiff (Dkt. 11 at 10), but it is probative as to whether Plaintiff's  
22 condition worsened and therefore whether Plaintiff's ability to work prior to his alleged onset date  
23 suggests that he retained the ability to work after the alleged onset date. Under the circumstances

1 of this case, the ALJ did not err in considering evidence and applications that pre-date the alleged  
2 onset date. *See, e.g., Yanes v. Berryhill*, 2017 WL 4181086, at \*2-3 (E.D. Cal. Sep. 20, 2017)  
3 (finding that an ALJ did not err when considering evidence that predates the alleged onset date,  
4 because that evidence is relevant where disability is not based on a discrete event and where the  
5 evidence does not show a worsening in the claimant's condition around the time of the alleged  
6 onset date (citing *Carmickle v. Comm'r of Social Sec. Admin.*, 533 F.3d 1155, 1165 (9th Cir.  
7 2008))).

8 Plaintiff goes on to argue that the ALJ mischaracterized the evidence when stating that he  
9 "asserted virtually the same impairments as he alleges in the current claim" as he did in the prior  
10 applications, without acknowledging that he alleged worsening symptoms. Dkt. 13 at 6. Plaintiff  
11 is mistaken: the ALJ did acknowledge that Plaintiff asserted that his functioning had worsened:  
12 "After denying any trauma or injuries while deployed in Afghanistan in 2012/2013 and without  
13 any evidence of intervening worsening of his preexisting impairments, the claimant asserted  
14 virtually the same claims in May of 2014, although in some areas even worse functioning than  
15 claimed before." (AR 43.) The ALJ goes on to explain why he found those reports of worsening  
16 functional limitations to be inconsistent with Plaintiff's activities, reports, and medical evidence.  
17 (AR 43-44.) Thus, Plaintiff has not shown that the ALJ misapprehended the content of Plaintiff's  
18 allegations.

19 B. Activities

20 The ALJ explained how a number of Plaintiff's activities contradict his alleged limitations.  
21 For example, the ALJ noted that Plaintiff alleged in his function report that he did not prepare  
22 meals or perform household chores, and that he could not remember to change his underclothes  
23 daily, bathe, brush his teeth, eat, or use toilet paper without reminders from his wife. (AR 43

1 (citing AR 305-06).) The ALJ contrasted those reports with his self-reported ability to work in the  
2 yard, play Bingo, take trips, visit the shooting range, help with household chores, and attend to his  
3 self-care, and noted that Plaintiff's primary care provider found that he was fully independent with  
4 basic activities of daily living. (AR 43 (referencing AR 2058).) The ALJ did not err in finding  
5 that Plaintiff's self-reported limitations were inconsistent with other evidence in the record, and in  
6 discounting Plaintiff's subjective testimony on that basis. The fact that Plaintiff's activities are  
7 not transferable to a work setting does not show error in the ALJ's decision (Dkt. 13 at 9), because  
8 the ALJ cited them as evidence of inconsistency. *See Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir.  
9 2007) (activities may undermine credibility where they (1) contradict the claimant's testimony or  
10 (2) "meet the threshold for transferable work skills").

11 C. Inconsistent statements

12 The ALJ cited multiple examples of Plaintiff's inconsistent statements, regarding his  
13 activities, lack of success with treatment, use of a cane, the details of a 2003 car accident, and use  
14 of alcohol. (AR 44-46.) Plaintiff does not specifically challenge most of these findings. He does,  
15 however, argue that his 2011 report that does not mention a cane does not contradict his 2014  
16 report that he does use a cane, because it merely shows that his condition worsened. Dkt. 11 at 11.  
17 But Plaintiff omits the key fact cited by the ALJ: that he claimed in 2014 that the cane had been  
18 prescribed in 2008 and he used it every day. (AR 45 (citing AR 310).) This portion of Plaintiff's  
19 statement renders the two statements inconsistent, and the ALJ did not err in finding that this  
20 inconsistency undermines Plaintiff's allegations. *See Burch v. Barnhart*, 400 F.3d 676, 680 (9th  
21 Cir. 2005) (ALJ appropriately considers inconsistencies in plaintiff's testimony).

22 Plaintiff also contends that the ALJ erred in finding that his statements regarding alcohol  
23 use were inconsistent, because he had admitted at the hearing that he used to drink a lot of beer.

1 Dkt. 13 at 9. This contention fails to address the ALJ's finding, however: the ALJ noted that  
2 Plaintiff reported in February 2011 that he had stopped drinking over the previous 5-6 months, but  
3 then reported in November 2011 that he had been completely abstinent from alcohol since 2008.  
4 (AR 46 (citing AR 819, 908).) In July 2014, Plaintiff reported that he drank half a glass of wine  
5 with dinner every day, but then in September 2014 he stated that he had consumed an alcoholic  
6 beverage 2-4 times per month in the past year. (AR 46 (citing AR 1403, 1479).) In April 2015,  
7 Plaintiff stated that he drank no more than one per beer per night, 4-5 nights a week, but then in  
8 September 2015 stated that he had not consumed any alcohol in the past year. (AR 46 (citing AR  
9 1666, 2067).) Plaintiff's admission at the hearing that he used to drink "a lot" is not relevant to  
10 the ALJ's finding, and does not show that it is erroneous.

11 Because the ALJ cited multiple examples of inconsistencies within Plaintiff's testimony,  
12 many of which are unchallenged, the ALJ provided a clear and convincing reason to discount  
13 Plaintiff's subjective testimony.

14 D. TBI

15 The ALJ found that

16 although the claimant mentioned his history of TBI at virtually every mental  
17 appointment at the VA and at Madigan, his claims folder during his military service  
18 was silent for objective evidence of in-service head injury and/or residuals of in-  
service head injury, and the claimant himself did not document a 2003 or 2005 head  
injury on paperwork preceding his discharge in 2008.

19 (AR 45 (citing AR 478-79 (medical record describing Plaintiff's lack of documentation for a 2003  
20 or 2005 in-service head injury)).) Plaintiff cites medical records that mention a TBI, but cites no  
21 evidence contradicting the ALJ's finding that Plaintiff did not report this injury until years after it  
22 allegedly took place. *See* Dkt. 11 at 12 (citing AR 446, 461, 1368-69). Plaintiff has not addressed  
23 the ALJ's rationale with respect to his delayed reporting of a TBI, which undermines the veracity



1 of his allegations, and therefore has not shown that the ALJ erred in discounting Plaintiff's  
2 testimony on this basis.

3 E. Threats

4 The ALJ noted that Plaintiff's applications contained threats to the decisionmakers,  
5 indicating that they should award him benefits or run the risk of him hurting people if he was  
6 required to work again, or of him exposing the agency to negative media exposure for mistreating  
7 a veteran. (AR 45-46 (citing AR 302, 339).) The ALJ reasoned that Plaintiff appeared to use  
8 threats as a way to get the results he wants, rather than as a "clinically-based response to a trigger  
9 of his PTSD or anger issues." (AR 46.) Plaintiff does not mention this rationale in his briefing.  
10 The Court finds that this unchallenged line of reasoning supports the ALJ's assessment of  
11 Plaintiff's subjective reports, because it suggests that Plaintiff engages in angry, threatening  
12 conduct for the purpose of manipulating others (at least on some occasions), rather than because  
13 of his impairments.

14 Because the ALJ provided several clear and convincing reasons to discount Plaintiff's  
15 subjective testimony, the ALJ's assessment of Plaintiff's testimony is affirmed.

16 Medical opinion evidence

17 Plaintiff raises several challenges to the ALJ's assessment of the medical opinion evidence.  
18 He argues that the ALJ erred in discounting opinions provided by Laurie B. Weston, M.D.; Allan  
19 Warner, M.D.; Robert Spiro, M.D.; and Rebecca Oliver, ARNP. Plaintiff also argues that the ALJ  
20 erred in discounting the disability ratings rendered by the U.S. Department of Veterans Affairs  
21 (VA). Plaintiff's brief also contains a lengthy recitation of medical evidence, without explaining  
22 how the ALJ erred in assessing that evidence. Dkt. 11 at 5-9. Finally, Plaintiff argues that the  
23 ALJ erred in crediting State agency opinions that were written before the record was complete.

1 The Court will consider each argument in turn.

2 Legal standards

3 In general, more weight should be given to the opinion of a treating physician than to a  
4 non-treating physician, and more weight to the opinion of an examining physician than to a non-  
5 examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). Where not contradicted  
6 by another physician, a treating or examining physician’s opinion may be rejected only for “‘clear  
7 and convincing’” reasons. *Id.* (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1396 (9th Cir. 1991)).  
8 Where contradicted, a treating or examining physician’s opinion may not be rejected without  
9 “‘specific and legitimate reasons’ supported by substantial evidence in the record for so doing.”  
10 *Id.* at 830-31 (quoting *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)). The ALJ may reject  
11 physicians’ opinions “by setting out a detailed and thorough summary of the facts and conflicting  
12 clinical evidence, stating his interpretation thereof, and making findings.” *Reddick v. Chater*, 157  
13 F.3d 715, 725 (9th Cir. 1998) (citing *Magallanes*, 881 F.2d at 751). Rather than merely stating  
14 her conclusions, the ALJ “must set forth [her] own interpretations and explain why they, rather  
15 than the doctors’, are correct.” *Id.* (citing *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988)).

16 Dr. Weston

17 Dr. Weston, Plaintiff’s treating psychiatrist, wrote in September 2014 that when asked by  
18 Plaintiff whether he is “stable enough to work at this time,” considering “[e]specially [his] ability  
19 to be around other people[,]” she believed he is not “stable enough to work at this time.  
20 Medications are still being adjusted and he is not psychiatrically able to cope with the stressors of  
21 a work situation.” (AR 1479.) The ALJ found this statement to be “little more than a conclusory  
22 assertion of disability, not an assessment of the claimant’s functioning. The claimant’s ability to  
23 work is the ultimate issue to be decided in this case and is reserved to the Commissioner.” (AR

1 47.)

2 Plaintiff argues that “Dr. Weston was qualified to state her opinion about [his] overall  
3 limitations,” and that the ALJ should have deferred to her opinion. Dkt. 11 at 3. Plaintiff does not  
4 address the ALJ’s specific rationale, however: he does not dispute that Dr. Weston’s opinion  
5 pertains to the ultimate issue before the ALJ and does not indicate specific functional limitations.  
6 This conclusory opinion is therefore less probative to the ALJ’s inquiry, and the ALJ did not err  
7 in discounting it. *See Morgan v. Comm’r Social Sec. Admin.*, 169 F.3d 595, 601 (9th Cir. 1999)  
8 (finding substantial evidence support for ALJ’s rejection of a treating physician’s opinion because  
9 the physician did not show how a claimant’s “symptoms translate into specific functional deficits  
10 which preclude work activity”).

11 Dr. Warner

12 Dr. Warner, a psychiatrist, examined Plaintiff in April 2015 and opined that he  
13 is living in a very sheltered and protective environment, in marked contrast to the  
14 world of competitive employment. Were he not so sheltered it appears as likely as  
15 not that contact with non-family members could result in physical aggression –  
behavior incompatible with sustained gainful employment. This is despite a great  
deal of treatment.

16 (AR 1669-70.) The ALJ discounted Dr. Warner’s conclusions because he found that Plaintiff’s  
17 environment was not as “sheltered and protective” as Dr. Warner believed. (AR 38.) Although  
18 Dr. Warner indicated that Plaintiff does not leave the home except for treatment appointments, the  
19 ALJ noted that Plaintiff reported elsewhere that he played Bingo once a week, visited a shooting  
20 range, and took trips with his family. (AR 44 (citing AR 328, 1517, 1594.) The ALJ did not err  
21 in discounting Dr. Warner’s opinion as inconsistent with the record. *Tommasetti v. Astrue*, 533  
22 F.3d 1035, 1041 (9th Cir. 2008) (inconsistency with the record properly considered by ALJ in  
23 rejection of physician’s opinions).

1 Dr. Spiro

2 Dr. Spiro examined Plaintiff as part of his VA disability review in December 2013, and  
3 found that his cervical spine condition resulted in “some loss of dexterity of the left (non-dominant)  
4 hand.” (AR 1105.) The ALJ gave “very little weight” to this opinion, finding that it was not  
5 supported by any “clinical findings associated with a loss of dexterity in the left hand.” (AR 46.)

6 Plaintiff argues that the ALJ is mistaken, because Dr. Spiro documented numbness in the  
7 left upper extremity. (*See* AR 1098.) Dr. Spiro did mention numbness, but he also tested  
8 Plaintiff’s muscle strength (pertaining to the elbow, wrist, and fingers) and reflexes and found that  
9 all of those attributes were normal. (AR 1101-02.) These normal findings are inconsistent with  
10 an alleged loss of dexterity.

11 The ALJ also discussed Plaintiff’s alleged problems with his left hand in detail at step two,  
12 in rejecting his allegations of a severe impairment related to his left hand. (AR 19.) There, the  
13 ALJ cited other normal test results pertaining to strength and sensation. (*See* AR 850.)

14 In light of a dearth of objective clinical findings documenting a loss of dexterity  
15 specifically, the ALJ did not err in discounting Dr. Spiro’s opinion regarding the impact on  
16 Plaintiff’s left-hand functionality. *See Thomas*, 278 F.3d at 957 (“The ALJ need not accept the  
17 opinion of any physician, including a treating physician, if that opinion is brief, conclusory, and  
18 inadequately supported by clinical findings.”).

19 Ms. Oliver

20 Ms. Oliver examined Plaintiff for disability reviews, opining on the functional impact of  
21 his foot conditions, neck conditions, respiratory conditions, and scars. (AR 1632-57.) Ms. Oliver  
22 found that Plaintiff’s foot condition “severely lim[i]ts walking and standing activ[it]y and other  
23 weight bearing activity,” and that his ability to perform “sedentary activity is also significantly

1 impacted by pain and swelling which result in severely reduced productivity and focus.” (AR  
2 1641-42.) The ALJ discounted this opinion because he found it to be based on Plaintiff’s  
3 subjective complaints (AR 1636-37), rather than the treatment record: Plaintiff only complained  
4 of debilitating foot pain during VA exams and his Social Security hearing, and reported to treating  
5 providers that Advil and a new pair of shoes improved his symptoms. (AR 37.)

6 Plaintiff argues that contrary to the ALJ’s finding, Ms. Oliver based her opinion primarily  
7 on her clinical findings and her review of the record. Dkt. 11 at 4. But Ms. Oliver’s examination  
8 report does not include any clinical findings that support her conclusion, and Plaintiff does not cite  
9 any clinical findings or other portions of the record that support Ms. Oliver’s opinion regarding  
10 the functional impact of Plaintiff’s foot condition. Therefore, Plaintiff has failed to demonstrate  
11 error in the ALJ’s reasoning.

12 With respect to Plaintiff’s neck conditions, Ms. Oliver opined that Plaintiff’s neck

13 [p]ain is severe and significantly limits his ability to focus and concentrate,  
14 precludes any physical labor activity and any activity that require movements of  
15 the neck to look around the environment. Would miss work [or] be late to work  
16 and require alternative work duties frequently at times of neck flare ups. Due to  
17 severity and frequency of neck flares [he] would be unlikely to be able to maintain  
18 gainful employment.

19 (AR 1651.) The ALJ again noted that Ms. Oliver’s conclusions were inconsistent with Plaintiff’s  
20 failure to report neck pain or tenderness to treating providers, as well as his normal range-of-  
21 motion testing at other times. (AR 37-38 (citing AR 1407, 1421, 1432-330).) The ALJ also  
22 emphasized that “none of the claimant’s treatment providers mentioned limited head or neck  
23 mobility, which they surely would have noticed if the claimant were as limited as he claimed.”  
(AR 38.)

Plaintiff again contends that Ms. Oliver’s opinion was based primarily on her clinical

1 findings and her review of the record, but this argument does not pertain to the ALJ's reasons for  
2 rejecting this portion of Ms. Oliver's opinion. Plaintiff does not address the contrary findings in  
3 the remainder of the record, or explain why the ALJ erred in considering the record as a whole to  
4 determine whether Ms. Oliver's opinion was consistent with the treatment notes. The ALJ did not  
5 err in rejecting Ms. Oliver's opinion as inconsistent with the record. *See Tommasetti*, 533 F.3d at  
6 1041 (inconsistency with the record properly considered by ALJ in rejection of physician's  
7 opinions).

8 VA disability rating

9         The ALJ summarized Plaintiff's VA disability ratings, ranging from 40% in October 2008  
10 to 100% beginning December 2013. (AR 47.) The ALJ noted that Plaintiff was rated as 90%  
11 disabled during the year that he worked 18 hours/day in a highly skilled occupation. (*Id.*) The  
12 ALJ also discussed the rationale provided for the most recent VA rating decision, related to an  
13 increase in Plaintiff's symptoms since he returned from working in Afghanistan in September  
14 2013, and the ALJ found "insufficient evidence of any real change in the claimant's reported  
15 functioning." (AR 47-48.) The ALJ went on to find that Plaintiff reported limitations to VA  
16 examiners that are inconsistent with the work he performed for a year in Afghanistan in 2012-13.  
17 (AR 48.)

18         Plaintiff argues that the ALJ erred in considering his work in Afghanistan because it was  
19 performed before his alleged onset date, but a comparison of Plaintiff's functioning pre- and post-  
20 Afghanistan is relevant in light of the VA rationale that Plaintiff's condition worsened after  
21 Afghanistan. (*See* AR 359-60.) Furthermore, contrary to Plaintiff's allegation that the ALJ  
22 "played doctor," the ALJ focused on a comparison of Plaintiff's reported functioning, which does  
23 not implicate medical expertise. (AR 47-48.) Finally, although Plaintiff argues that the ALJ

1 mischaracterized the reason Plaintiff stopped working in Afghanistan, he does not dispute the  
2 ALJ's point that Plaintiff was able to perform his entire contract despite his impairments. (AR  
3 48.) The ALJ provided persuasive, specific, valid reasons to discount the VA rating. *See*  
4 *McCartey v. Massanari*, 298 F.3d 1072, 1076 (9th Cir. 2002).

5 State agency opinions

6 Plaintiff argues that the ALJ erred in crediting the State agency opinions because they were  
7 written before the record was complete. Dkt. 11 at 9. But the ALJ reviewed the opinions in the  
8 context of the updated record and found them to be consistent (AR 49-50), and Plaintiff has not  
9 identified any specific evidence that he suggests is inconsistent with the consultants' opinions.  
10 Although Plaintiff argues that the consultants did not fully account for his own subjective  
11 symptoms, they explained that they found his reports only partially credible. (AR 137-48, 150-  
12 63.) Plaintiff has not identified an error in the ALJ's assessment of the State agency opinions.

13 Because Plaintiff has not established error in the ALJ's assessment of any of the challenged  
14 medical evidence, the Court affirms the ALJ's assessment.

15 Ms. Meadows' evidence

16 Ms. Meadows completed two third-party reports and testified at the hearing about  
17 Plaintiff's functionality. (AR 101-08, 324-31, 391-402.) The ALJ summarized Ms. Meadows'  
18 statements and found them to be contradicted by Plaintiff's ability to work in Afghanistan in 2012-  
19 13, and inconsistent with the medical record and Plaintiff's activities. (AR 50-51.) The ALJ also  
20 described Ms. Meadows' testimony as very similar to Plaintiff's testimony, and suggested that it  
21 should be discounted for similar reasons. (AR 51.)

22 An ALJ's reasons to discount a lay witness statement must be germane. *Molina v. Astrue*,  
23 674 F.3d 1104, 1111 (9th Cir. 2012). Plaintiff argues that similarity between Plaintiff's testimony

1 and Ms. Meadows' testimony is not a germane reason to discount her testimony. He is mistaken,  
2 because the reasons the ALJ provided for discounting Plaintiff's testimony apply with equal force  
3 to Ms. Meadows' statements. *See Valentine v. Comm'r of Social Sec. Admin.*, 574 F.3d 685, 694  
4 (9th Cir. 2009) ("In light of our conclusion that the ALJ provided clear and convincing reasons for  
5 rejecting Valentine's own subjective complaints, and because Ms. Valentine's testimony was  
6 similar to such complaints, it follows that the ALJ also gave germane reasons for rejecting her  
7 testimony."). That Ms. Meadows' statements are not identical to Plaintiff's is immaterial (Dkt. 11  
8 at 17); similarity is sufficient. *Id.*

9 Plaintiff also alleges that the ALJ failed to explain why he rejected Ms. Meadows'  
10 statements regarding Plaintiff's need for a cane. Dkt. 11 at 17. But the ALJ did note that although  
11 Ms. Meadows stated in 2014 that Plaintiff was prescribed a cane in 2008 and used it every day,  
12 she had not mentioned any cane in her 2011 statement. (AR 50-51.) The ALJ therefore did not  
13 overlook Ms. Meadows' statement regarding Plaintiff's need for a cane, and his reasoning  
14 regarding the 2014 statement's inconsistency with the 2011 statement is a germane reason to  
15 discount her allegations.

16 The ALJ also noted that at the hearing, Ms. Meadows' denied knowledge of an incident  
17 regarding a person in a wheelchair. (AR 51.) Although Plaintiff posits a theory as to why Ms.  
18 Meadows was not able to comment on this incident (Dkt. 11 at 17), the ALJ did not rely on this  
19 portion of her testimony as a reason to discount her statements, and therefore any discussion of  
20 this issue does not suggest harmful error in the ALJ's decision.

21 Because the ALJ cited several germane reasons to discount Ms. Meadows' statements,  
22 many of which are unchallenged, the Court affirms the ALJ's assessment of Ms. Meadows'  
23 evidence.



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

DATED this 10th day of January, 2018.

Mary Alice Theiler  
United States Magistrate Judge